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No. 90-811

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

JOHN A. STILES,
Petitioner,

vs.

ROY BLUNT,
Secretary of State of the State of Missouri,

and

WILLIAM WEBSTER,
Attorney General of the State of Missouri,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED

1. Is the rational relationship test the appropriate standard of review for an age requirement for a candidate for public office where neither a fundamental right nor a suspect classification is involved?

2. Is the State of Missouri's legitimate interest in having mature lawmakers rationally related to a minimum age requirement for public office?

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STATEMENT OF THE CASE

Article III, § 4 of the Missouri Constitution and § 21.080, RSMo [Revised Statutes of Missouri] 1986, require a member of the Missouri House of Representatives be twenty-four years of age. On January 9, 1990, petitioner sought to be certified as a candidate on the Democratic Party ticket for the office of State Representative for the 119th District

of the Missouri General Assembly. Petitioner, because of his birth on April 11, 1967, would not be twenty-four years old when the Missouri General Assembly next convened. Thus, when petitioner attempted to file his declaration of candidacy, the Secretary of State informed petitioner that he was without authority to certify petitioner as a qualified primary candidate, because petitioner, then twenty-two years of age, would not have attained the age of twenty-four years at the time he would be sworn in as a State Representative.

On February 12, 1990, petitioner filed a Petition for Declaratory Judgment and Injunctive Relief alleging that the age requirement for candidates for House of Representatives violated the First, Fifth, and Fourteenth Amendments to the United States Constitution. In the alternative, petitioner asserted that § 1.205, RSMo 1986 should be interpreted in such a way as to add nine months to petitioner's age.

The District Court held a hearing in the matter on March 21, 1990, considering the evidence presented on both the preliminary and permanent injunction requests. The District Court dismissed petitioner's cause of action for failure to state a claim upon which relief could be granted. The District Court found that Missouri's requirement for the office of State Representative did not violate petitioner's constitutional rights and denied petitioner's request for injunctive relief.

Petitioner appealed the District Court Order to the United States Circuit Court of Appeals for the Eighth Circuit. On August 24, 1990, after oral argument, the court affirmed the order of the District Court. The court's opinion, which is set forth in Petitioner's Appendix, recites the facts underlying its decision.

The primary election and general election have since been held. Petitioner's name did not appear on the ballot as a candidate for State Representative of the 119th District of Missouri. Moreover, on April 11, 1991, petitioner will attain the age of twenty-four years. Although numerous cases have held a claim for ballot access is not rendered moot by the occurrence of an election, *see, e.g., Storer v. Brown*, 415 U.S. 724, 737, n.8 (1974); *Rasario v. Rockefeller*, 410 U.S. 752, 756, n.5 (1973), those cases involved controversies that were capable of

repetition, and yet evaded review. Petitioner, the sole plaintiff in this litigation, will never again be deemed unqualified as a candidate for the Missouri House of Representatives for failure to meet the age requirement. Therefore, the underlying controversy in this case is moot.

ARGUMENT

I.

Article III, § 4, of the Missouri Constitution provides:

> Each representative shall be twenty-four years of age, and next before the day of his election shall have been a qualified voter for two years and a resident of the county or district which he is chosen to represent for one year, if such county or district shall have been so long established, and if not, then of the county or district from which the same shall have been taken.

Section 21.080, RSMo 1986, contains similar language. The age requirement of twenty-four years for members of the Missouri House of Representatives has existed since its inclusion in Article III, § 3 of the Missouri Constitution of 1820, adopted shortly before Missouri's admission to the Union.

Petitioner asserts that the lower courts erred when they used the rational basis test to dismiss his claim that these provisions of Missouri law violated petitioner's right to the equal protection of the laws. In making this claim, petitioner overlooks every relevant decision ever made in a federal court.

In determining the level of scrutiny to be applied to an equal protection challenge, courts have recognized that "strict scrutiny is only appropriate when persons are classified according to 'suspect' criteria or a 'fundamental interest' is involved or affected by the classifications scheme." *Felix v. Milliken*, 463 F. Supp. 1360, 1371 (E.D. Mich. 1978). In the present litigation, the District Court and the Court of Appeals correctly concluded that no fundamental interest was at stake, and that the age requirement did not impinge upon any suspect classification. (Petitioner's Appendix at 11).

There is no fundamental right to run for elective office, an important distinction from the right of suffrage. *Bullock v. Carter*, 405 U.S. 134, 142-143 (1972). *See also Hatten v. Rains*, 854 F.2d 687, 693 (5th Cir. 1988); *Zielasko v. Ohio*, 873 F.2d 957, 961 (6th Cir. 1989); *Hankins v. State of Hawaii*, 639 F. Supp. 1552, 1555 (D. Hawaii 1986). In *Bullock v. Carter, supra*, this Court observed such "fundamental

status" had not previously been attached to candidacy as to the right of suffrage. *Id.*, 504 U.S. at 142. This Court recognized that "the rights of voters and the rights of candidates do not lend themselves to neat separation," and concluded that because a filing fee requirement impacted upon the financial resources of voters wanting to support candidates, a standard of strict scrutiny was required. *Id.*, 405 U.S. at 143-144. However, this Court cautioned that "not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review." *Id.*, 405 U.S. at 143.

Despite petitioner's assertions to the contrary, this is not a ballot access case, but rather, a case involving candidate qualifications. Unlike the filing fee in *Bullock*, an age requirement is a qualification states have traditionally imposed upon voters as well as upon candidates for public office. Prior to ratification of the Twenty-Sixth Amendment to the United States Constitution, the states determined the minimum age for voters in state and national elections. In *Oregon v. Mitchell*, 400 U.S. 112 (1970), a plurality opinion of this Court ruled on a challenge by the states to the Voting Rights Act Amendments of 1970, Pub. L. 91-285, 84 Stat. 314, because states believed it took away powers reserved to the states in the Constitution to control their own elections. *Id.*, 50 U.S. at 117. Justice Black, writing for the Court, opined that while Congress could set a minimum voting age for national elections, those portions of the Act pertaining to state and local elections were unconstitutional and unenforceable. *Id.*, 400 U.S. at 117-118.

Justice Stewart, in a separate opinion joined by the Chief Justice and Justice Blackmun, discussed the standard for reviewing a state's minimum age requirement for voting after observing that the states have a "constitutionally unimpeachable interest in establishing some age qualifications as such." *Id.*, 400 U.S. at 294. He concluded:

> Yet to test the power to establish an age qualification by the "compelling interest" standard is really to deny a State any choice at all, because no State could demonstrate a "compelling interest" in drawing the line with respect to age at one point rather than another.

Id.

Federal courts presented with the question of the constitutionality of a state's requirement of a minimum age for candidates for public office have applied a rational basis test, following the analysis of *Oregon v. Mitchell, supra. See, e.g., Raza Unida Party v. Bullock*, 349 F. Supp. 1262 (W.D. Texas 1972); *Blassman v. Markworth*, 359 F. Supp. 1 (N.D. Ill. 1973); *Manson v. Edwards*, 482 F.2d 1076 (6th Cir. 1973); *Human Rights Party of Ann Arbor v. Secretary of State of Michigan*, 370 F. Supp. 921 (E.D. Mich. 1973). These cases distinguished a minimum age requirement from ballot access issues such as the filing fee in *Bullock v. Carter, supra*. An age qualification falls with equal weight on all voters. *Blassman v. Markworth, supra*, 350 F. Supp. at 7. "The age minimum does not permanently exclude any candidate, nor more importantly, has it been shown to preclude or substantially narrow the field of candidates who espouse any given political ideological, and/or socio-economic views." *Id.*

Not only does an age requirement for elective office fail to impact on fundamental rights, it also fails to create any suspect classification for equal protection purposes. In addition to an age requirement as a qualification for public office, numerous courts have examined legislative line drawing on the basis of age in the context of mandatory retirement provisions and representations on juries. In *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307 (1976), this Court made it clear that age classifications do not trigger heightened scrutiny. *Id.*, 427 U.S. at 312-314. *See also Price v. Cohen*, 715 F.2d 87, 92 (3d Cir. 1983). "A class denoted only by age does not constitute a 'discrete and insular minority,' such as race, sex or national origin. Persons subject to age-based classifications are not 'saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.' " *Arritt v. Grisell*, 567 F.2d 1267, 1272 (4th Cir. 1977), *quoting San Antonio School District v. Rodriguez*, 411 U.S. 1, 28 (1973).

Particularly, age requirements affecting young people, such as petitioner, are the least suspect, since they bring about no absolute prohibition, but merely a postponement of the opportunity to engage in the conduct at issue. *Felix v. Milliken, supra*, 463 F. Supp. at 1373-

1374. Thus, this case does not warrant the same interest demonstrated in the grant of *certiorari* in the case of *Gregory v. Ashcroft*, 898 F.2d 598 (8th Cir. 1990). Young adults ages 18 to 24 are not a distinct class, *Anaya v. Hansen*, 781 F.2d 1, 3 (1st Cir. 1986), and there has been no showing they possess attitudes that cannot be adequately represented by older individuals. *United States v. Olsen*, 473 F.2d 686, 688 (8th Cir. 1973).

II.

The Court of Appeals correctly upheld the District Court's finding that a rational relationship exists between the minimum age requirement of twenty-four years for a State Representative and a legitimate state interest. The 'rationality' standard is a 'relatively relaxed' one which reflects judicial awareness that the drawing of lines that create distinctions is an unavoidable task for which the legislative and administrative branches of government are more suited than the courts and that such formation of categories should be viewed as presumptively valid." *Crane v. Schneider*, 635 F. Supp. 1430, 1432 (E.D.N.Y. 1986).

Because of the pressures confronting a legislator, it is not unreasonable for the citizens of Missouri to demand their State Representatives bring maturity and some life experience to the office. "The State has a clear interest in the maturity of its office holders, just as it has an interest in the maturity of its voters." *Human Rights Party of Ann Arbor v. Secretary of State for Michigan*, 370 F. Supp. 921, 924 (E.D. Mich. 1973).

The second question of a rational basis analysis is whether the means chosen by the state are rationally related to its legitimate goal. An established minimum age for elected officials is "sanctioned by time-honored precedent. The Constitution of the United States fixes a minimum age of thirty-five for the President (Art. 2, § 1, c. 5), thirty for United States Senators (Art. 1, § 3, c. 3), and twenty-five for Representatives (Art. 1, § 2, c. 2)." *Manson v. Edwards*, 482 F.2d 1076, 1078 (6th Cir. 1973). The vast majority of states impose some minimum age requirement upon candidates for the house of representatives. For example, four states require a candidate for house of representatives to be twenty-five years of age: Arizona, Const., Art.

4, Part 2; Colorado, Const., Art. 5, § 4; South Dakota, Const., Art. 3, § 3; Utah, Const., Art. 6, § 5. In addition to Missouri, Delaware, Const., Art. 2, § 3 and Kentucky, Const., § 32, set the minimum age at 24. The majority of the remaining states set the minimum age at 21.

Federal courts that have examined the issue of minimum age requirements for public office have declined to enter this particular ring of the legislative circus. As the courts stated in *Blassman v. Markworth*, 359 F. Supp. 1, 8 (N.D. Ill. 1973), "were we to strike down the age minimum requirement here, we would be accomplishing nothing more than substituting our judgment for that of the Illinois legislature. This we decline to do."[1]

It is not the State's obligation to come forward with empirical evidence to support twenty-four as the perfect minimum age requirement. The chosen requirement need not be the best or even the least burdensome. It is sufficient that the state can demonstrate that the requirement "may rationally be thought to advance the asserted purposes." *Bowman v. United States*, 510 F. Supp. 1183, 1185 (E.D. Va. 1981). Should the citizens of Missouri determine another minimum age would best serve their needs, the democratic process allows an amendment to the Missouri Constitution to be set in motion either by the legislature or by an initiative petition. Since 1820, Missouri has declined to take such action.[2]

Missouri's minimum age requirement is rationally related to a legitimate state interest. Because this legitimate state interest does not

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[1] In the present case, of course, it is not the judgment of the Missouri legislative body, but rather that of the voters who adopted the Missouri Constitution, in 1820, 1875 and again in 1945.

[2] Two resolutions to change the age requirement for state representatives are pending in the Missouri General Assembly this session. House Joint Resolution No. 10, 86th General Assembly, First Regular Session (1991) would submit to the voters of Missouri an amendment to Article III, § 3 of the Missouri Constitution to change the age requirement to twenty-one years. House Joint Resolution No. 14, 86th General Assembly, First Regular Session (1991) would require only that a representative be a "qualified voter".

impinge upon an overriding federal right, the petition for writ of certiorari should be denied.

CONCLUSION

In view of the foregoing, the respondent submits that petitioner's petition for a writ of certiorari should be denied.

Respectfully submitted,

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